

# OPEN MEETING ITEM



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ORIGINAL

COMMISSIONERS  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE



## ARIZONA CORPORATION COMMISSION

22

Arizona Corporation Commission

DOCKETED

DATE: April 17, 2008

DOCKET NO: RR-02634A-08-0012

APR 16 2008

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Belinda Martin. The recommendation has been filed in the form of an Opinion and Order on:

### ARIZONA EASTERN RAILWAY COMPANY (CROSSING UPGRADE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 28, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 6, 2008 AND MAY 7, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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AZ CORP COMMISSION  
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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION  
9 OF THE ARIZONA DEPARTMENT OF  
10 TRANSPORTATION TO UPGRADE AN  
11 EXISTING CROSSING OF THE ARIZONA  
12 EASTERN RAILWAY COMPANY AT  
13 MESQUITE STREET IN THE CITY OF  
14 GLOBE, GILA COUNTY, ARIZONA, AT  
15 AAR/DOT NO. 742-353-L.

DOCKET NO. RR-02634A-08-0012

DECISION NO. \_\_\_\_\_

16 OPINION AND ORDER

12 DATE OF HEARING: March 25, 2008

13 PLACE OF HEARING: Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE: Belinda A. Martin

15 APPEARANCES: Mr. Charles Hains, Staff Attorney, Legal Division on  
16 behalf of the Utilities Division of the Arizona  
17 Corporation Commission.

18 **BY THE COMMISSION:**

19 On January 8, 2008, the Arizona Department of Transportation ("ADOT") filed with the  
20 Arizona Corporation Commission ("Commission") an application for approval for the Arizona  
21 Eastern Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at  
22 Mesquite Street in Globe, Arizona, at AAR/DOT No. 742-353-L ("Application").

23 On January 24, 2008, by Procedural Order, the proceeding was scheduled for hearing on  
24 March 25, 2008, and other procedural dates for filing and public notice were set.

25 On February 4 and March 7, 2008, ADOT filed certification of public notice by means of  
26 certified U.S. mail and by means of publication, respectively, pursuant to the Commission's  
27 Procedural Order.

28 On March 25, 2008, a full public hearing was convened before a duly authorized

1 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's  
2 Railroad Safety Section of the Safety Division ("Staff") appeared with counsel. At the conclusion of  
3 the hearing, the matter was taken under advisement pending submission of a Recommended Opinion  
4 and Order to the Commission.

5 \* \* \* \* \*

6 Having considered the entire record herein and being fully advised in the premises, the  
7 Commission finds, concludes, and orders that:

8 **FINDINGS OF FACT**

9  
10 1. On January 8, 2008, ADOT filed an Application in which it requested an Opinion and  
11 Order from the Commission approving an agreement between ADOT and the Railroad to upgrade the  
12 existing public at-grade crossing at Mesquite Street in Phoenix, Arizona at AAR/DOT No. 742-353-L.<sup>1</sup>

13 2. The agreement between ADOT and the Railroad provides for improvements to be  
14 made by replacing the existing crossbucks and stop signs with new automatic 12-inch LED flashing  
15 lights, bells, and gates as well as a new concrete crossing surface.

16 3. Pursuant to the Commission's Procedural Order, ADOT provided all interested parties  
17 with notice of the Application and hearing thereon by certified U.S. mail and by publication in the  
18 *Arizona Silver Belt*.

19 4. The hearing was held as scheduled on March 25, 2008.

20 5. According to the report filed by Staff, the improvements described in this proceeding  
21 should help to improve public safety at the crossing in the future.

22 6. Mr. Chris Watson, Staff's Grade Crossing Inspector, testified that there is minimal  
23 vehicular traffic and only one or two train crossings a day with no record of accidents at the crossing.  
24 He testified that there is no need for a grade separation at this crossing.

25 7. According to ADOT, vehicular traffic flow currently at the crossing of the Railroad's  
26 tracks is 92 vehicles per day. ADOT did not provide Staff with any traffic projections for the

27 <sup>1</sup> On March 23, 1998, the Commission issued Decision No. 60723 which approved the inclusion of the Mesquite Street  
28 crossing for upgrading as part of the Commission's Annual Array with funds provided to Arizona by the Federal  
Highway Administration pursuant to 23 U.S.C. § 130 ("130"). Mr. Watson testified that the State has up to 10 years to  
use the federal funds for the 130 project.

1 crossing in the future, but Staff testified that they don't anticipate the level of service changing or  
2 fluctuating significantly in the near future.

3 8. The cost apportionment for the installation of the crossing upgrade as provided in the  
4 Application is proper and approximately \$242,936 will be paid solely by ADOT from funds provided  
5 by the Federal Highway Administration to upgrade Railroad crossings on public roadways which are  
6 not primarily for the benefit of the Railroad.

7 9. Staff has recommended that the Application be approved.

8 **CONCLUSIONS OF LAW**

9 1. The Commission has jurisdiction over the parties and over the subject matter of the  
10 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
11 40-337.01.

12 2. Notice of the Application was provided in accordance with the law.

13 3. Installation of the crossing upgrade is necessary for the public's convenience and  
14 safety.

15 4. Pursuant to A.R.S. §§ 40-336 and 337, the Application should be approved as  
16 recommended by Staff.

17 5. After installation of the crossing, the Railroad should maintain the crossing in  
18 accordance with A.A.C. R-14-5-104.

19 **ORDER**

20 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application  
21 is hereby approved.

22 IT IS FURTHER ORDERED that the Arizona Eastern Railway Company shall complete the  
23 crossing upgrades as described in the Application within 15 months from the effective date of this  
24 Decision.

25 IT IS FURTHER ORDERED that the Arizona Eastern Railway Company shall notify the  
26 Commission, in writing, within 10 days of both the commencement and the completion of the  
27 crossing upgrade, pursuant to A.A.C. R14-5-104.  
28

1 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Arizona  
2 Eastern Railway Company shall maintain the crossing in compliance with A.A.C. R14-5-104.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
5  
6

7 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_  
8

9 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_  
10

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
12 Director of the Arizona Corporation Commission, have  
13 hereunto set my hand and caused the official seal of the  
14 Commission to be affixed at the Capitol, in the City of Phoenix,  
15 this \_\_\_\_ day of \_\_\_\_\_, 2008.

16 \_\_\_\_\_  
17 BRIAN C. McNEIL  
18 EXECUTIVE DIRECTOR

19 DISSENT \_\_\_\_\_  
20

21 DISSENT \_\_\_\_\_  
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28

1 SERVICE LIST FOR: ARIZONA EASTERN RAILWAY COMPANY

2 DOCKET NO.: RR-02634A-08-0012

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